

From: Willis, Sharnett
Location: 4308 WJC-N
Importance: Normal
Subject: Ethics Training with Henry Darwin, Assistant Deputy Administrator and Chief of Operations; Veronica Darwin, Senior Advisor for Land & Emergency Management; Kris Green, Special Assistant for OCFO; Mike Abboud and Daisy Letendre, Senior Advisor for Policy
Start Date/Time: Wed 7/12/2017 3:00:00 PM
End Date/Time: Wed 7/12/2017 4:30:00 PM

To: Fugh, Justina[Fugh.Justina@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]
From: Darwin, Henry
Sent: Fri 9/15/2017 7:44:42 PM
Subject: RE: Ethics advice concerning your invitation to the ELI dinner

Thank you Justina. I do plan to attend and will follow your guidance.

Henry

From: Fugh, Justina
Sent: Thursday, September 14, 2017 12:55 PM
To: Darwin, Henry <darwin.henry@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>
Subject: Ethics advice concerning your invitation to the ELI dinner

Hi there,
OGC/Ethics understands that you have received or will soon receive an invitation from the Environmental Law Institute (ELI) to be its guest at its annual awards dinner to be held this year on October 18, 2017 at the Omni Shoreham Hotel. I am writing to confirm that, if you decide to attend this event, you may do so consistent with the Standards of Ethical Conduct for Employees of the Executive Branch and, if you are a political appointee, consistent with the Trump Ethics Pledge.

This event qualifies for the Widely-Attended-Gathering gift exception, and as such, OGC/Ethics determines that your attendance at the event is in the Agency's interest because it will further agency programs and operations. Should you attend this event, you will NOT be required to report this as a gift on your financial disclosure report form (if you file one) because the gift is valued at \$200, which is BELOW the reporting threshold.

Also, this approval applies only to invitations from ELI itself. Any invitations from other sources will require separate determinations by either OGC or the appropriate Deputy Ethics Official. This determination covers you only -- the invitation is not transferable nor does it include a guest (and you can't solicit ELI to ask that a guest join you).

Acceptance of Free Attendance to a Dinner and Fundraiser (WAG rule)

The gift offered is an evening reception and dinner sponsored by ELI. Because the organization is offering you a complimentary ticket, we must analyze it according the gift rules. Generally, federal employees are prohibited from accepting gifts given because of their official position or given by a prohibited source (typically, a person either regulated by or seeking to do business with the EPA). In this instance, the gift of free attendance is offered to you because of your official position. In analyzing the situation, we determined that the WAG exception is available because the reception will be widely attended, there will be a diversity of views represented, and there is an opportunity for the exchange of ideas. In order to utilize this gift exception, OGC/Ethics must also make a

written determination that we believe your attendance is in the Agency's interest. We do, in fact, conclude that there is an Agency interest in your attendance if you wish to go.

Limitations Due to the Fundraiser Event

Please note that this event is a fundraiser. Therefore, ELI cannot use or reference your official position or title or any authority associated with your public office in furtherance of the fundraising effort. You may not actively or visibly participate in the promotion, production, or presentation of the event, which means that you cannot sit at a head table nor stand in a receiving line. We have confirmed with ELI that you will be placed by ELI and not seated at the request of any sponsoring entity that has bought a table.

Please let me know if you have any questions.

Regards,

justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

To: Fugh, Justina[Fugh.Justina@epa.gov]
Cc: Griffo, Shannon[Griffo.Shannon@epa.gov]
From: Darwin, Henry
Sent: Fri 9/15/2017 1:10:43 PM
Subject: RE: recusal statement for your review and signature
HDarwin Recusal Statement.pdf

Attached is my completed/signed Recusal Statement.

Thank you!

Henry

From: Fugh, Justina
Sent: Tuesday, September 12, 2017 5:50 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: recusal statement for your review and signature

Hi there,

OGC/ethics is finalizing recusal statements for recent appointees, including yours. We have previously advised you – and you have assiduously been following that advice – regarding your ethics obligations, but this document will formally notify people about your obligations. Please review the document and fill in the missing bits of information. Then print it out, sign and date it, and pdf it back to Shannon Griffo (also of OGC/Ethics) and me.

Thanks very much in advance!
Justina

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Henry Darwin 
Assistant Deputy Administrator

TO: Ryan Jackson
Chief of Staff

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed, as well as my own bar obligations.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I am precluded from participating personally and substantially in any determination, request or recommendation that specifically relates to or affects the salary or benefits of my spouse, Veronica Darwin. Therefore, pursuant to 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, I am recusing myself from participating in any award, promotion or any other personnel or administrative matter that

involves my spouse as a specific party.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I have ethics obligations with respect to my former employer, the State of Arizona. The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me. The definition of “former employer” in the Executive Order excludes state government.¹ Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to federal ethics rules, I understand that I have a one-year cooling off period with my former employer. For one year after my resignation from the State of Arizona, I will not participate personally and substantially in any particular matter involving specific parties in which the State of Arizona is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). I understand that my recusal lasts until July 4, 2018 and this federal ethics limitation does not extend to particular matters of general applicability, such as rulemaking. During my recusal period, any questions about my ability to participate in specific party matters involving the State of Arizona should be directed to OGC/Ethics without my participation or knowledge.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Justina Fugh, Senior Counsel for Ethics

¹ See Exec. Order 13,770, Section 2(j), which provides that “‘former employer’ does not include ... State government.”

To: Darwin, Henry[darwin.henry@epa.gov]
Cc: Griffo, Shannon[Griffo.Shannon@epa.gov]
From: Fugh, Justina
Sent: Tue 9/12/2017 9:49:58 PM
Subject: recusal statement for your review and signature
Henry Darwin recusal 9 12 17.docx

Hi there,

OGC/ethics is finalizing recusal statements for recent appointees, including yours. We have previously advised you – and you have assiduously been following that advice – regarding your ethics obligations, but this document will formally notify people about your obligations. Please review the document and fill in the missing bits of information. Then print it out, sign and date it, and pdf it back to Shannon Griffo (also of OGC/Ethics) and me.

Thanks very much in advance!
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the
zip code) | phone 202-564-1786 | fax 202-564-1772

To: Darwin, Henry[darwin.henry@epa.gov]
Cc: Griffo, Shannon[Griffo.Shannon@epa.gov]
From: Fugh, Justina
Sent: Fri 9/15/2017 1:57:05 PM
Subject: uh oh ... you didn't date your recusal
[signed recusal.pdf](#)

Hi there,

I just realized you didn't date your recusal. I've done that by affixing today's date. See attached. I'll also send this version to Ryan Jackson.

Best,

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the
zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Friday, September 15, 2017 9:11 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: recusal statement for your review and signature

Attached is my completed/signed Recusal Statement.

Thank you!

Henry

From: Fugh, Justina
Sent: Tuesday, September 12, 2017 5:50 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: recusal statement for your review and signature

Hi there,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

SEP 15 2017

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

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FROM: Henry Darwin 
Assistant Deputy Administrator

TO: Ryan Jackson
Chief of Staff

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed, as well as my own bar obligations.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I am precluded from participating personally and substantially in any determination, request or recommendation that specifically relates to or affects the salary or benefits of my spouse, Veronica Darwin. Therefore, pursuant to 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, I am recusing myself from participating in any award, promotion or any other personnel or administrative matter that

involves my spouse as a specific party.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I have ethics obligations with respect to my former employer, the State of Arizona. The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me. The definition of "former employer" in the Executive Order excludes state government.¹ Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to federal ethics rules, I understand that I have a one-year cooling off period with my former employer. For one year after my resignation from the State of Arizona, I will not participate personally and substantially in any particular matter involving specific parties in which the State of Arizona is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). I understand that my recusal lasts until July 4, 2018 and this federal ethics limitation does not extend to particular matters of general applicability, such as rulemaking. During my recusal period, any questions about my ability to participate in specific party matters involving the State of Arizona should be directed to OGC/Ethics without my participation or knowledge.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Justina Fugh, Senior Counsel for Ethics

¹ See Exec. Order 13,770, Section 2(j), which provides that "'former employer' does not include ... State government."

To: Darwin, Henry[darwin.henry@epa.gov]
From: Fugh, Justina
Sent: Fri 9/15/2017 1:23:32 PM
Subject: RE: recusal statement for your review and signature

Hi there,

Thanks very much! I know that you had your ethics briefing with other members of the EPA Ethics team, so I'm sorry to have missed the chance to meet you then. But I will get the chance to meet you myself on Monday afternoon at the OGC Mission Measures session. Looking forward to it!

Cheers,
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the
zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Friday, September 15, 2017 9:11 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: recusal statement for your review and signature

Attached is my completed/signed Recusal Statement.

Thank you!

Henry

From: Fugh, Justina
Sent: Tuesday, September 12, 2017 5:50 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: recusal statement for your review and signature

Hi there,

OGC/ethics is finalizing recusal statements for recent appointees, including yours. We have previously advised you – and you have assiduously been following that advice – regarding your ethics obligations, but this document will formally notify people about your obligations. Please review the document and fill in the missing bits of information. Then print it out, sign and date it, and pdf it back to Shannon Griffo (also of OGC/Ethics) and me.

Thanks very much in advance!
Justina

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North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the
zip code) | phone 202-564-1786 | fax 202-564-1772

To: Darwin, Henry[darwin.henry@epa.gov]
From: Fugh, Justina
Sent: Fri 7/28/2017 7:57:43 PM
Subject: an ethics reminder

Hi there,

Earlier today, I got to meet your wife and had occasion to send her a quick note about her ethics obligations. Yours are similar to hers, so allow me to send this note to you, too.

FINANCIAL CONFLICTS OF INTEREST

- You and your spouse have not yet filed your public financial disclosure reports (though I appreciate that you're working on them!), so I don't know whether you have any financial conflicts. We won't be able to address any financial conflict of interests until we know for sure about your finances. That said, OGC/Ethics explained about financial conflicts in your initial ethics briefing.

TRUMP ETHICS PLEDGE

- Although the pledge that you signed places additional restrictions upon political appointees, you previously worked for the State of Arizona. You are therefore not subject to Paragraph 6 of the executive order because states are excluded from the definition of "former employer." Instead, you are covered by the impartiality provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, specifically 5 CFR Part 2635, Subpart E.

IMPARTIALITY RULE

- Pursuant to 5 CFR 2635.503(b)(1)(iv), you have a "covered relationship" with your former employer, the State of Arizona (not just the department for which you worked). For one year from the time you left Arizona (not from when you started at EPA), you cannot work on any particular matter in which the State of Arizona is a party or represents a party.

RECUSAL

You cannot work on any specific party matter involving the State of Arizona, such as an enforcement action, permit, license, Superfund site, etc. You also can't meet with State of Arizona officials unless you first consult with OGC/ethics. In addition, you cannot be involved in any personnel action (including promotions, bonuses, performance reviews) that involve your spouse. Once we get a better sense of whether you have any financial conflicts, we'll draft a recusal statement for you to issue more formally. For that, we will need to know when you left Arizona. Can you tell me that? Thanks!

If you have any further questions, please let me know.

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A |

Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries

To: Darwin, Henry[darwin.henry@epa.gov]
Cc: Daniel Fort[Fort.Daniel@epa.gov]
From: Fugh, Justina
Sent: Fri 7/7/2017 12:50:13 AM
Subject: Your ethics reporting obligations for your EPA position
Distinctions between Reporting Transactions on the OGE 278 - January 201....docx
Hatch Act chart February 2017.docx

TO: Henry Darwin

Hi there,

My name is Justina Fugh, and I am the Senior Counsel for Ethics at the US Environmental Protection Agency. I understand that you will be joining EPA on or about July 2, 2017 in a non-career SES position as the Assistant Deputy Administrator in the Immediate Office. Congratulations! In this position, you will be required by the Ethics in Government Act of 1978 to file the Office of Government Ethics Form 278, Public Financial Disclosure Report. My office reviews your information to assess any possible ethics implications. Your report is officially due no later than 30 days after you start at EPA. That said, until you complete the report, we won't have a handle on your possible conflicts issues and can't write a recusal statement for you, which may affect what you work on initially. We encourage you to fill out the report as soon as possible.

EPA uses an entirely electronic filing system (called INTEGRITY.gov or INTEGRITY), so you will file the form (called the OGE 278e) electronically. You are required by law to complete the form, so please don't disregard this requirement; in fact, failure to complete the form timely can result in a \$200 late filing fee, and may also result in criminal or civil penalties.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of \$200 for not filing your report timely, and there are also civil and criminal penalties for failure to file at all or for inaccurate reporting.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

Dan Fort (copied here, one of my OGC/Ethics colleagues) will create an account for you in INTEGRITY, which is the electronic filing system operated and secured by the Office of Government Ethics (OGE). You will be assigned a "new entrant" report with the EPA's business address already included. Do not enter your personal home address in that place. Your filer

category is "SES." Your user ID will be your EPA email address. For help in INTEGRITY, check out the information on the OGC/Ethics website at <http://intranet.epa.gov/ogc/Integrity/Landingpage.html> .

Once you receive the email from INTEGRITY.gov that will provide you with specific instructions, log into the federal government's max.gov site, the gateway to INTEGRITY. If you don't receive your account notification within three days, then please check your clutter box for messages from INTEGRITY.gov, or contact Dan Fort so that we can follow up.

DEADLINE FOR SUBMITTING THE FORM

INTEGRITY will give you 30 days to complete the form. If you need additional time, you must contact me directly before your due date. There is a limit to how much additional time we can give you before late fees kick in, so please pay attention to this requirement.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income , and other assets and income. So you are reporting the assets for yourself, your spouse and your dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation and amount of accrued investment income. The definition of "investment income" is NOT tied to what's taxable! You must report accrued income, even if tax deferred or exempt, that you got in the asset over the reporting period (which is last calendar year + this calendar year, up to the date of filing). Look at 1099 forms for the accrued income from investments or review your statements.

- Do not report federal salary, your spouse's federal salary, or Thrift Savings Plan
- But if you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- But if your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments, but do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button

OTHER ETHICS REQUIREMENTS FOR YOU

STOCK ACT

Because you are required to file the form, you are also now subject to the STOCK Act. You are required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds \$1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. For a comprehensive review of reportable transactions, see EPA Ethics Advisory 2012-03 at http://intranet.epa.gov/ogc/ethics/Ethics_Advisory_2012-03.pdf and our revised chart, also attached.

HATCH ACT

You will be "lesser restricted" under the Hatch Act. Please familiarize yourself with the Hatch Act as it affects you, and from the EPA intranet (inside the firewall), can gain a good overview by reviewing our online training course at <http://intranet.epa.gov/ogcrmo01/ethics.htm> or by referring to our attached handy chart that reminds you of your restrictions.

-

CONTACTS

Dan Fort, Jeanne Duross, Jennie Keith or I will be happy to help you with your 278e form. We can be reached at ethics@epa.gov or individually at:

Jeanne Duross, Ethics Attorney, duross.jeanne@epa.gov or 202-564-6595

Daniel Fort, Ethics Officer, fort.daniel@epa.gov or 202-564-2200

Justina Fugh, Senior Counsel for Ethics, fugh.justina@epa.gov or 202-564-1786

Cheers,

Justina

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North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the
zip code) | phone 202-564-1786 | fax 202-564-1772



ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.
2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.
3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.
4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.
5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.
8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.

Signature

Date

Darwin, Henry Rodman
Print or type your full name (last, first, middle)

7/12, 2017

When to Report Transactions

This table's guidance is effective beginning January 1, 2013 and for informational purposes only. Email ethics@epa.gov for specific questions.

| | Periodic Transaction Report | Annual and/or Termination Report |
|---|-----------------------------|----------------------------------|
| Investment Assets | Report on the OGE 278-T? | Report on the OGE 278? |
| Transactions of \$1,000 or less | | |
| • Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes ¹ |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds" ² | No | Yes |
| • Any asset in which the transaction amount is \$1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust ³ | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

¹ You do not report the purchase or sale of your personal residence on Schedule B unless you rent it out at any time during the reporting period.

² To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

There are several types of investment vehicles that are not excepted investment funds, including (but not limited to) managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs). You should note that the individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. If you have questions about whether a particular asset or investment vehicle is an EIF, contact ethics@epa.gov.

³ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

| Type of Activity | PAS* | Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other | Career SES, ALJs |
|---|------------|--|------------------|
| Personal (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day | Yes | Yes | Yes |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| Affecting Official Resources | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| Fundraising | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

*PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Subject: done!
Date: Tuesday, July 28, 2020 10:20:00 AM

Hi Henry,

I added the information to your report and certified it this morning. You're done!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Monday, July 27, 2020 10:43 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: Request for Waiver of Late Fee and Answers to Questions
Thank you Justina. The (b) (6) currently has about (b) (6)
Henry

Sent from my iPhone

On Jul 27, 2020, at 6:13 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Henry,

Yes, I am granting your request for a waiver because this is your first oops and, most importantly, you're taking steps to ensure you don't end up in a similar situation again.

Thanks for the confirmation on Part 6, and now for the (b) (6). Here's what you reported previously:

(b) (6), (b) (3) (A)
[Redacted]
[Redacted]

I can enter this information for you if it's correct. However, if the value or income amount have changed, then reply with the updated information and I'll enter that.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Monday, July 27, 2020 4:54 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Request for Waiver of Late Fee and Answers to Questions

Hi Justina:

Thank you for the reminder. I was working with my financial advisor to confirm the answers below, and to make sure that we were doing everything we could to make sure that reporting delay wouldn't happen again.

I would like to request a waiver of the late fee referenced in the e-mail below. Although I have been in public service my entire career, I have never before been a federal employee and these public disclosures are new to me. I have been doing my best to make the proper disclosures, and in fact did make the disclosures at issue, albeit late. Submitting them late was not done on purpose. The transactions at issue took place as I was (b) (6)

The transactions at issue were performed during that time by my financial advisor under general authorization, but without specific approval or knowledge by me. I have confirmed with my financial advisor that I now (b) (6)

. I only own (b) (6). I have also taken measures to make sure my financial advisor notifies me of any reportable transactions in the future should this change. Thank you for the consideration. If there are any questions, please let me know.

As for the other questions:

As for Part 6, I confirm that I (b) (6)

I do have (b) (6). I don't know how I missed that question. What do I need to do to correct this?

Thank you.

Henry

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Thursday, July 23, 2020 8:39 PM

To: Darwin, Henry <darwin.henry@epa.gov>

Subject: Here's what happens when you're on the wrong end of an ELMS measure

Hi Henry,

EPA Ethics has two ELMS measures for meeting our statutory and regulatory dates for reviewing, certifying and releasing public financial disclosure reports. By law, we must release any report we receive within 30 days (whether or not certified), and we have to review each report within 60 days of our receipt. And, by law, filers who file their reports late, including any periodic transaction reports, must pay the late filing fee. So, in keeping with our ELMS measures, we have reviewed your report within the applicable time period. To your sorrow, we have found that you owe late fees.

Let's begin with three technical issues with your report and what I need from you in order to certify it:

- You over-reported some transactions. The "reporting period" for this report is CY 2019 so there is no need for you to include any transactions in 2020.

As you can see from the pdf of your uncertified form (see attached), in Part 7, you provided information (b) (6) that occurred in CY 2020.

- Nothing for you to do. I will remove those transactions from your report but have saved that version to a pdf so that you can easily recreate them for your next filing
- In Part 6, (b) (6)
 - Please confirm that you did not (b) (6)
- You had previously reported have a (b) (6) but that is not included this year
 - Please confirm that you do not have any (b) (6)

Now for the notification of the late fees. Transactions of securities are required to be reported the earlier of 30 days after learning of the transaction or 45 days of the transaction taking place. This requirement and the attached chart on “when to report transactions” was communicated to you during your initial ethics training. Additionally, in August 2019, you and all other public filers received the attached reminder advisory from the Ethics Office. But in reviewing your report filed on 6/29/20, we see in part 7 that you reported (b) (6), (b) (3) (A) for the first time, and you did not file any periodic transaction reports in INTEGRITY. You failed to report (b) (6), (b) (3) (A)

A \$200 late fee per missed report is assessed as a matter of law. You owe the government \$600.

You may request a waiver of the late filing fee penalty if there were extraordinary circumstances that prevented you from filing a timely periodic transaction report. If you wish to request a waiver, then please send me an email by July 29.

Otherwise, we will direct you to submit a payment by check once we return to the office.

Thank you for your attention to these matters,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Mosley, Ferne](#)
To: [Darwin, Henry](#)
Cc: [Fugh, Justina](#)
Subject: Financial disclosure report - reminder
Date: Tuesday, January 19, 2021 5:18:00 PM
Importance: High

Hello, Mr. Darwin – we are just checking back on the status of your financial disclosure report; we see that it is in “draft/pre-review” but it has not yet been submitted.

If you are not able to complete it before noon tomorrow, please send us your forwarding email address so that we can create a new account and merge your EPA account and transfer the information to a new account. You will not be able to access the report with your PIV card or EPA email after your access to these tools are suspended.

If you have any questions, please contact me or Justina.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

From: [Mosley, Ferne](#)
To: [Darwin, Henry](#)
Cc: [ethics](#)
Subject: RE: Annual Report Extension Request
Date: Wednesday, May 13, 2020 10:42:00 AM

Hello, my (b) (6). We can grant the request. Your new due date is June 29.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
Mail Code 2311A
Desk phone: (202) 564-8046
Cell phone: (202) 306-2998

From: Darwin, Henry <darwin.henry@epa.gov>

Sent: Tuesday, May 12, 2020 5:18 PM

To: ethics <ethics@epa.gov>

Subject: Annual Report Extension Request

I am requesting a 45 day extension to gather additional materials needed for my report. The reason for the request is the (b) (6)

, and the additional workload associated with helping the agency transition to near 100% teleworking as necessitated by the COVID-19 pandemic. If you have any questions, please let me know.

Thank you.

Henry

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Subject: RE: Arizona Environmental Strategic Alliance (AESa)
Date: Tuesday, January 7, 2020 6:51:00 PM

Hi,

Because the distance is less than 50 miles away, you will not be in travel status (so not on official travel orders). This will involve local travel, for which you are permitted to use your personal vehicle (what the government calls your POV) and are still entitled to seek local travel reimbursement for the mileage and any parking expenses. You will be on official business, so not required to pay for the travel expenses out of pocket.

If there is or are meals associated with this event, then you may partake because you are speaking. Therefore, any food or meal extended to all participants can be accepted by you pursuant to 5 CFR 2635.203(g).

Safe travels, and my best to you and Veronica,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Tuesday, January 07, 2020 6:01 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Arizona Environmental Strategic Alliance (AESa)

I don't know what "on official travel orders" means, but Casa Grande is 40 miles from my duty station (Phoenix).

Thanks

Henry

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, January 7, 2020 3:57 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Subject: RE: Arizona Environmental Strategic Alliance (AESa)

Hi Henry,

Seems to me that you are being asked to speak in your official EPA capacity, so if the destination is more than 50 miles away from your duty station, why wouldn't you be on official travel orders?

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Tuesday, January 07, 2020 4:58 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Arizona Environmental Strategic Alliance (AESa)

Is this something I can do? My plan would be to attend as well. I plan would be to drive using my personal vehicle and not seek any reimbursement from EPA or them.

Thanks

Henry

From: Michael Sundblom <michael.sundblom@pinal.gov>

Sent: Tuesday, January 7, 2020 2:28 PM

To: Darwin, Henry <darwin.henry@epa.gov>

Subject: Arizona Environmental Strategic Alliance (AESa)

Hello Henry,

Welcome back to Phoenix. I hope you're doing well.

I'm writing to invite you to speak at our annual AESA (<http://azalliance.org>)/Pinal County Air Quality compliance assistance seminar in March. We are looking for a keynote lunch speaker and since you're back in Phoenix we thought it would be a great opportunity for EPA to meet the local folks. We are currently working on the agenda topics but anticipate it will cover general air quality issues the County wants to relay and then several industry speakers on specific facility air, waste, or water topics.

The conference will be held in Casa Grande at the Holiday Inn either March 17 or 19 and generally starts at 8:00AM and ends at 3:00PM. We had 63 attendees last year from a wide variety of government, industry, and consulting backgrounds.

Please let me know if this is something you're interested in and if you can squeeze us in your busy schedule. I can provide more details as the date gets closer.

I'm happy to answer any questions you may have about the conference.

Regards,

Mike Sundblom

Director

Pinal County Air Quality Control

(b) (6)

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Cc: [Griffo, Shannon](#)
Subject: RE: Arizona Issues
Date: Friday, August 3, 2018 10:06:00 AM

Heh heh heh. But now that the recusal period has ended, you needn't bother!

From: Darwin, Henry
Sent: Friday, August 03, 2018 8:50 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Arizona Issues
Thank you Justina, and I will look into that tattoo.
Henry

From: Fugh, Justina
Sent: Thursday, August 2, 2018 5:38 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Arizona Issues

Hi,

What? You don't have your recusal statement tattooed to the inside of your forearm? Here it is, and it says that your cooling off period with Arizona expired on July 4, 2018. So you may interact with Arizona without first consulting OGC/Ethics.

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Thursday, August 02, 2018 5:33 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Arizona Issues

Justina:

I seem to recall that certain restrictions on my dealing with Arizona issues expired on my one-year anniversary here at EPA. Is this true? If so, would you remind me what restrictions have expired? I have received an inquiry from the Director of Arizona DEQ about an issue and want to make sure I know how to respond before doing so (or whether I need to just tell him I cannot engage).

Thanks

Henry

From: [Fugh, Justina](#)
To: [Willis, Sharnett](#)
Cc: [Keith, Jennie](#)
Subject: RE: Arizona Manufacturer's Council -- Summit in Prescott, AZ
Date: Monday, June 18, 2018 2:12:47 AM
Attachments: [FILLABLE Ethics Travel Form.pdf](#)

Here's the form to use, Sharnett. You can list me as the DEO and return the form to me by pdf. Jennie Keith, copied here, will end up reviewing it.

Justina

From: Willis, Sharnett
Sent: Friday, June 15, 2018 5:29 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Arizona Manufacturer's Council -- Summit in Prescott, AZ

Good Afternoon Justina,

I'm Henry's scheduler/travel preparer. Please let me know which forms I need to complete.

Thanks.

Sharnett Willis

Office of the Administrator

202/564-7866

From: Darwin, Henry
Sent: Friday, June 8, 2018 1:49 PM
To: Willis, Sharnett <Willis.Sharnett@epa.gov>
Subject: FW: Arizona Manufacturer's Council -- Summit in Prescott, AZ
Can you please work with Justina?
Thanks
Henry

From: Fugh, Justina
Sent: Friday, June 8, 2018 1:38 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Subject: Re: Arizona Manufacturer's Council -- Summit in Prescott, AZ

Henry,

The short answer is yes, we can allow you to accept this invitation. The slightly longer answer is that we will need to know the name of your scheduled/travel preparer so that person can complete the necessary ethics travel form so that my staff can accept the offer of travel expenses.

Even if the donor is a federally registered lobbyist, we can still allow you to speak and accept travel but you cannot accept any honorarium or other gift such as a presentation item, etc.

Justina

Sent from my iPhone

On Jun 8, 2018, at 11:24 AM, Darwin, Henry <darwin.henry@epa.gov> wrote:

Justina:

What do you say?

Thanks

Henry

From: Scott, Elizabeth [<mailto:escott@swlaw.com>] **On Behalf Of** Narducci, Lucas

Sent: Wednesday, June 6, 2018 7:35 PM

To: Darwin, Henry <darwin.henry@epa.gov>

Cc: (b) (6) 'Glenn Hamer ((b) (6))'

(b) (6)

Reeve, Amanda (b) (6) >

Subject: Arizona Manufacturer's Council -- Summit in Prescott, AZ

Attached is correspondence from Luke Narducci with regard to the above event.

Beth Scott

Legal Administrative Assistant to:

David Boden / Mark Cole / Jennifer Hadley Catero / Michael J. Marrie / Lucas J.

Narducci

Snell & Wilmer L.L.P.

(b) (6)

escott@swlaw.com www.swlaw.com

<image001.png>

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<2018 0606 LT H Darwin re Prescott Summit.pdf>

Status >>>

New Form

<<< Status

Traveler Information (click here to open/close)

**EPA**Approval to Accept Travel
Under Ethics Reform Act of 1989**Event Location****Travel Starts****Event Sponsor(s)**

DEO or designee

Employee Name**Title****Organization****Phone Number****Traveler's Role** 

Official Duty



Outside Activity

Travel Ends**Purpose of Event** **Spousal expenses
included?**

Yes



No

Who is the non-federal person(s) or entity(s) paying travel expenses? **Name of Organization:****Address:****What kind of entity is this?** 

for-profit



state/local government



College/University



not for-profit



foreign government



Other (explain below)

Describe the entity (source) paying travel expenses. If the source of the travel expenses is an organization, describe the membership of the organization. For example, the "Center for Sound Science" may be largely made up of companies which produce chemicals regulated by your program or interest groups who take a position on our policies or regulations. (You can attach files below.)

Is this source a party to a matter that is pending before you for decision, such as a contract or assistance agreement matter, permit, license, etc.? *If "Yes", then acceptance of travel expenses cannot be approved*



Yes



No

Is this source paying the travel through an EPA contract, Federal assistance agreement OR FEDERAL GRANT (including a recipient's matching share)? *If "Yes", then acceptance of travel expenses cannot be approved*



Yes



No

Is this source otherwise affected by EPA matters in which you participate?



Yes



No

If "Yes," describe the matter and attach explanation (below).

Itemization of benefits **Amount & METHOD of payment** **IN KIND****IN CASH**

ticket, meals etc., est. the \$ must be a check etc. made out to EPA

Common carrier transportation

\$ 0.00

\$ 0.00

Meals

\$ 0.00

\$ 0.00

Lodging

\$ 0.00

\$ 0.00

Local transportation

\$ 0.00

\$ 0.00

Waiver of fees

\$ 0.00

\$ 0.00

Other (specify)

\$ 0.00

\$ 0.00

Sub Total

\$ 0.00

Sub Total

\$ 0.00

TOTAL →→→→→ \$ 0.00

(NOTE: For travel outside the United States, different rules may apply. Check with your ethics advisor.)

Does this amount exceed the amount payable under Federal Travel Regulations?

(see <http://www.gsa.gov> for per diem rates)

☐ Yes ☒ No

Any other explanations or attachments 

Traveler's Certification

By: 

Date:

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Cc: [Keith, Jennie](#)
Subject: RE: CIBO's 40th Annual Meeting, Tucson, Arizona
Date: Friday, June 22, 2018 10:27:34 AM

Hi,

Just so you know, CIBO is a federally registered lobbyist, so under the terms of the Trump Ethics Pledge that you signed, you cannot accept any gifts from them. If they offer lodging, travel expenses, meals, thank you items or tschotskes, etc., then please remember that you cannot personally accept anything at all. I may be able to use some statutory authority to accept travel items, but only if they offer it unsolicited (which is not included in the invitation below, so I'm not expecting it), and Sharnett does an ethics travel form to get OGC/Ethics approval in advance.

But the short answer is that you may accept the speaking engagement if you wish. And if you speak, then you will be able to attend any session or events that are offered to all participants *on that day only* without raising any ethics concerns. You are not currently cleared to attend any special speakers' dinner, leadership or VIP reception, or events on days other than when you speak. If any of those opportunities are offered, then please let me know.

As an aside, we in OGC/Ethics are putting together a training module for principals and staff to review the ethics implications of invitations. Jennie Keith, copied here, is spearheading this effort. Jennie plans a session for the immediate office of the Administrator, and I think we should include Sharnett Willis and Aaron Dickerson.

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Thursday, June 21, 2018 4:33 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: CIBO's 40th Annual Meeting, Tucson, Arizona
Any concerns?
Thanks Justina.
Henry

From: Bob Bessette [<mailto:bessette@cibo.org>]
Sent: Thursday, June 21, 2018 1:32 PM
To: Darwin, Henry <darwin.henry@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>
Cc: Bob Bessette <Bessette@cibo.org>; 'Gail C. Bessette' (b) (6); Robert Kaufmann (b) (6); 'McIver, Ann' (b) (6)
Subject: CIBO's 40th Annual Meeting, Tucson, Arizona

Dear Mr. Darwin,

The Council of Industrial Boiler Owners (CIBO) is holding its 40th Anniversary Annual Meeting at Lowes Ventana Canyon in Tucson, Arizona this October 24th

through the 26th. I have had a number of requests that we invite you to talk to our members about the new EPA and how we can work together, better, in the future. My members have been impressed with how the Agency is changing and with the application LEAN management to the benefit of both the states and our industrial and institutional companies and universities. Your insight could be tremendous value as our members implement their companies' and institutions' energy and environmental goals and objectives.

I am attaching a draft agenda for the meeting and a current CIBO member list. Our participants are the actual people who implement the corporate energy and environmental goals and objectives. They are the representatives of the owners and operators of the industrial and institutional energy infrastructure who are now looking for ways to actually do what is needed – the energy and environmental engineers and managers who make it happen. The more they know about working with EPA and states, the more they can accomplish, quicker and in the most cost effective way.

We expect between 60 and 70 people to attend. As you can see on the draft agenda, We would hope for a presentation at 10:00 AM on Thursday October 25th.

Let me know if this is possible or if you have any additional questions.

Bob Bessette

Robert D. Bessette

President

Council of Industrial Boiler Owners

6801 Kennedy Road Suite 102

Warrenton, Virginia 20187

Telephone: 540-349-9043

Mobile: (b) (6)

E-mail: bessette@cibo.org

Website: <http://www.cibo.org>

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Subject: RE: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting
Date: Friday, November 9, 2018 1:37:00 PM

Hi Henry,

I'm so happy that you noticed the "free meal" and wondered about it. I have now spoken with a representative of the Mercatus Center, who indicates that approximately 20 people will be present, most of whom will be very senior government officials like yourself. There will also be a handful of Mercatus Center employees as well as Mr. Meese, of course. As I understand the set up, you are all expected to participate in the discussion actively and will be arranged in one long table for interactive discourse.

You may attend this event in your official capacity and eat the meal (which I hear will be a la carte). You will be presenting information on behalf of the agency by interacting with the other participants (rather than just attending). Because we are applying the gift exclusion set forth at 5 CFR 2635.203(b)(8), you will not have to figure out how inexpensively you have to eat (ha!). Enjoy the meal, whatever you decide to order. You will not have to report the gift on your financial disclosure report as it will fall under the reporting threshold, which is \$390.

Justina

Justina Fugh | Director Ethics Law Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North William Jefferson Clinton Federal Building | Washington DC 20460 (for ground deliveries use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Tuesday, November 06, 2018 1:18 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting
Any concerns?
Thanks
Henry

From: Karen Czarnecki [<mailto:kczarnecki@mercatus.gmu.edu>]
Sent: Friday, October 19, 2018 12:49 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Cc: Robin Bowen (b) (6) ; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting



October 19, 2018

Subject: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting

Dear Deputy Administrator Darwin:

President Donald Trump has set high goals for his administration's regulatory reform efforts and is breaking new ground in regulatory management with tools like regulatory budgeting. History shows that the obstacles to making long-term changes in regulatory management are many and diverse. Through a combination of economic research and data technology, scholars with the Mercatus Center at George Mason University have identified enhancements to the US regulatory budget process that can make it more resilient and successful in the long-run.

We cordially invite you to join former Attorney General Ed Meese as he hosts a dinner discussion among senior administration leaders and Mercatus scholars about the challenges that federal regulatory agencies face in their reform efforts and well-tested approaches that could expand the scope and duration of regulatory budgeting in the US. The dinner will take place on Wednesday, November 14, from 6:00 p.m. to 8:30 p.m., at the Boardroom of Del Frisco's Double Eagle Steakhouse, 950 I St. N.W. #501, Washington, D.C. 20001.

From your leadership perspective, you will have the opportunity to contribute insights on the progress made thus far on regulatory reform and the challenges ahead. In addition to remarks by General Meese, Laura Jones, Executive Vice-President of the Canadian Federation of Independent Business and Visiting Research Fellow at the Mercatus

Center, will share her insights on the elements that contributed to British Columbia's nearly 17-year success with regulatory caps. Dr. Patrick McLaughlin, Senior Research Fellow and Director of Policy Analytics at the Mercatus Center at George Mason University, will describe how policymakers can use artificial intelligence to more effectively and efficiently analyze federal regulations.

The dinner provides a forum for collaboration and information-sharing in a confidential, small-group setting. Please let me know if you will be able to join us on November 14. I may be reached by phone at 703-993-9673, or by email at kczarnecki@mercatus.gmu.edu. Alternatively, you may contact Robin Bowen, our Director of Federal Outreach, by phone at 703-993-8582 or by email at rbowen@mercatus.gmu.edu.

Sincerely,

Karen M. Czarnecki
Vice President of Outreach

From: [Fugh, Justina](#)
To: [Bolen, Brittany](#); [Darwin, Henry](#)
Subject: RE: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting
Date: Thursday, November 8, 2018 2:43:00 PM

Okay, thanks.

Henry – I'll get back to you tomorrow about your attendance.

From: Bolen, Brittany
Sent: Thursday, November 08, 2018 11:31 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>
Subject: RE: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting
Justina, forgive my delayed response. I was only copied on the invitation to Henry, and was not planning to attend.

From: Fugh, Justina
Sent: Tuesday, November 6, 2018 1:23 PM
To: Darwin, Henry <darwin.henry@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting
Yes. We need to determine whether or not you may attend and, if so, whether we will have to advise you to pay for the meal or not. Let us contact them for the details.

BRITTANY – were you also invited?

Justina Fugh | Director Ethics Law Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North William Jefferson Clinton Federal Building | Washington DC 20460 (for ground deliveries use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Henry
Sent: Tuesday, November 06, 2018 1:18 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting
Any concerns?
Thanks
Henry

From: Karen Czarnecki [<mailto:kczarnecki@mercatus.gmu.edu>]
Sent: Friday, October 19, 2018 12:49 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Cc: Robin Bowen (b) (6); Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting



October 19, 2018

Subject: Invitation to Dinner Discussion Hosted by the Honorable Ed Meese on Regulatory Budgeting

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Sincerely,

Karen M. Czarnecki
Vice President of Outreach

From: [Fugh, Justina](#)
To: [Darwin, Henry](#); [Darwin, Veronica](#)
Subject: one quick question for you both (on your financial disclosure reports)
Date: Tuesday, May 29, 2018 10:13:00 AM

Hi there,

It appears that (b) (6)

- [REDACTED]

- [REDACTED]

INVESTMENT INCOME

“Investment income” includes interest, rents, royalties, dividends, capital gains, and other income derived from an asset. Examples of investment income include, but are not limited to, income derived from: stocks, bonds, investment funds, and other securities; real estate; retirement investment accounts; annuities; the investment portion of life insurance contracts; interests in trusts and estates; collectible items; commercial crops; accounts or other funds receivable; and businesses.

The definition of investment income for our purposes of financial disclosure is specifically not tied to the Internal Revenue Service’s definition of income for tax purposes. You need to report accrued income, even if deferred or exempt for tax purposes. For example, tax-deferred income in a retirement account is reportable in your financial disclosure report. Where you do not receive a report of the amount accruing, such as with United States savings bonds, you may make a good faith estimate.

From: [Fugh, Justina](#)
To: [Darwin, Veronica](#); [Darwin, Henry](#)
Subject: RE: oops, hit send too early!
Date: Tuesday, May 29, 2018 2:25:00 PM

Hi there,

Thanks for the information about the transactions. I've updated both of your forms, but now it seems that you may need to update the "investment income" fields. To that end, I've formally returned both forms to you so that if you need to make any changes, you can do so directly on the form. To remind, here is the definition of "investment income" and you'll need to report any increase in CY 2017 over \$200:

INVESTMENT INCOME:

"Investment income" includes interest, rents, royalties, dividends, capital gains, and other income derived from an asset. Examples of investment income include, but are not limited to, income derived from: stocks, bonds, investment funds, and other securities; real estate; retirement investment accounts; annuities; the investment portion of life insurance contracts; interests in trusts and estates; collectible items; commercial crops; accounts or other funds receivable; and businesses.

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Thanks for your help!

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Darwin, Veronica
Sent: Tuesday, May 29, 2018 1:58 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>
Subject: RE: oops, hit send too early!

Thank you for your help. I checked (b) (6). See my notes below.

From: Fugh, Justina
Sent: Tuesday, May 29, 2018 10:28 AM
To: Darwin, Veronica <darwin.veronica@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>
Subject: oops, hit send too early!

Allow me to finish this note:

Hi there,

(b) (6)

- [REDACTED]

[REDACTED]

(b) (6)

-

INVESTMENT INCOME

“Investment income” includes interest, rents, royalties, dividends, capital gains, and other income derived from an asset. Examples of investment income include, but are not limited to, income derived from: stocks, bonds, investment funds, and other securities; real estate; retirement investment accounts; annuities; the investment portion of life insurance contracts; interests in trusts and estates; collectible items; commercial crops; accounts or other funds receivable; and businesses.

The definition of investment income for our purposes of financial disclosure is specifically not tied to the Internal Revenue Service’s definition of income for tax purposes. You need to report accrued income, even if deferred or exempt for tax purposes. For example, tax-deferred income in a retirement account is reportable in your financial disclosure report. Where you do not receive a report of the amount accruing, such as with United States savings bonds, you may make a good faith estimate.

Thanks!

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Subject: Reminder about your ethics obligations: check in with OGC/Ethics!
Date: Thursday, December 17, 2020 1:05:00 AM
Attachments: [Departing EPA for PAS and non career SES updated Nov 2020.pdf](#)
[Negotiation Notification Form for digital signature.pdf](#)

Dear Henry,

I'm sending each of the non-career SES appointees this same note so even though you're already in touch with us, you are getting it too. I just want to be sure that everyone remembers to contact us!

Justina

Hi there,

On behalf of the Designated Agency Ethics Official, Jim Payne, and OGC/Ethics, I am writing to remind you that we are here to explain your ethics obligations while you are still employed at EPA and also after you depart. The Transition Guide you have received or will soon receive outlines your basic ethics obligations but we also prepared an in-depth summary of the rules for your type of appointment (see attached).

If you are looking for another job while still employed at EPA, then you are subject to the *seeking and negotiating for employment* rules. Then, after you leave, you will be subject to the criminal post-employment rules as well as obligations under the Trump Ethics Pledge. **We strongly encourage you to make an appointment with one of us in OGC/Ethics prior to your departure so that you understand your ethics obligations and restrictions.** To set up a one-on-one appointment, send an email to ethics@epa.gov.

For your convenience, the Ethics Office will be hosting general sessions to review the seeking and post-employment rules for employees who are leaving federal service. Feel free to drop in and ask questions, or schedule a one-on-one with us by emailing ethics@epa.gov.

| GENERAL ETHICS OFFBOARDING SESSION | LINK TO SESSION |
|--|--|
| Friday, December 18 at 2 pm eastern | Click here to join the meeting |
| Wednesday, December 23 at 2 pm eastern | Click here to join the meeting |
| Wednesday, December 30 at 2 pm eastern | Click here to join the meeting |
| Wednesday, January 6 at 2 pm eastern | Click here to join the meeting |
| Wednesday, January 13 at 2 pm eastern | Click here to join the meeting |

Here are the important ethics reminders for you to know:

- You must disqualify yourself from participating in EPA matters affecting the financial interests of a potential employer when you begin to seek employment;
- You must complete the *Notification of Employment Negotiation Form* (attached) within 3 business days of engaging in an employment negotiation with a non-federal entity;
- You must file a termination financial disclosure report (OGE Form 278) within 30 days of your departure, but you may file it **within 15 days of your departure** so that you can access the electronic filing system with your PIV card;
- **There is a \$200 late filing fee penalty that is imposed by law if your OGE Form 278 report is received more than 30 days after the due date.** If you need an additional 45 days, then send an email ethics@epa.gov prior to the due date; and
- Failure to file a termination OGE Form 278 will result in referral to the Department of Justice for civil action that will include civil penalties as high as \$50,000. Several years ago, we had to refer a former EPA appointee for failure to file a termination report, despite almost two years of reminders. In the end, that person filed and paid a civil penalty of \$15,000. **We strongly encourage you to file your report before you leave.**

After your departure, please remember that we are still here to answer your post-employment questions. A little “small print” for your consideration: an opinion from an ethics official may be a mitigating factor in any prosecution for an alleged violation of the criminal post-employment rules, provided that you fully disclosed all relevant facts and relied upon our advice in good faith. So, really, ask us before you do something, okay?

We look forward to hearing from you!

Justina and the OGC/Ethics team

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

UPDATED NOVEMBER 2020
FOR PAS AND NON-CAREER SES

Ethical Rules Relating to Your Departure from EPA

Thank you for your service to EPA and the Executive Branch. While you are planning to move to the next phase of your career or retirement, you have continuing ethics obligations because you are still an EPA employee. This document reviews the ethics rules regarding:

- seeking and post employment criminal laws and regulations;
- termination financial disclosure reporting requirements;
- employment negotiation and procurement integrity notification requirements; and
- Trump Ethics Pledge post-employment requirements.

Your ethics officials are here for you during and after your departure from federal service to answer your questions and provide ethics opinions, so please use us as a resource! Contact us at ethics@epa.gov.

BEFORE YOU LEAVE GOVERNMENT SERVICE

1. Seeking employment: you may not participate in a “particular matter” having a direct and predictable effect on the financial interests of any person or entity with whom you are seeking or negotiating for employment or with whom you have an agreement for future employment. *See generally, 5 Code of Federal Regulations, Subpart F, 18 United States Code (U.S.C.) § 208.*

“Seeking employment” begins when you:

- directly or indirectly make an unsolicited communication regarding possible employment with any person or entity;
- engage in negotiations with a view toward reaching an agreement regarding possible employment;
- receive a response to a job application or employment proposal indicating an interest in employment discussions; or
- make a response, other than rejection, to an unsolicited communication from any person regarding possible employment with that person.

“Seeking employment” ends when:

- you or the prospective employer reject the possibility of employment and all discussions of possible employment have terminated; or
- two months have elapsed since you sent an unsolicited resume or employment proposal, and you have not received an interest in employment discussions.

See generally, 5 C.F.R. Part 2635, Subpart F

Example 1: You are contacted by an official of a State Environmental Department in your home state. On the call, he asks if you are interested in a position with the State beginning in the next calendar year. You are currently working on an enforcement action involving the State but are interested in returning to the area at the beginning of the year. You agree to send him your resume for an open position.

Answer: Because you are open to the prospect of future employment and have sent your resume for an open position, *you are “seeking employment”* and must immediately disqualify yourself from participating in the pending enforcement action until either you or the State affirmatively rejects the possibility of employment or you leave the EPA to take the position, whichever is *later*.

Example 2: Deferring employment discussions. You give a speech to a trade association and afterwards, someone says, “hey, have you been thinking about what you’re going to do when the Trump Administration is over? My company would be very interested in someone like you.” You say that you aren’t considering any future employment prospects until after you leave government.”

Answer: This response will be considered a *rejection* of an offer of future employment and therefore you *are not “seeking employment.”*

Another Example: But let’s say instead that you know your region is working on a regulation affecting the financial interests of the company as a member of a discrete industry sector and you respond by saying you cannot discuss future employment while you are working on the regulation, but you would like to discuss employment with the company when the regulation is final.

Answer: Because you have merely deferred employment discussions until the foreseeable future, you have begun “seeking employment” under the ethics regulations and now may not work on the regulation that affect the company’s financial interests. It’s not sufficient that you said you won’t talk to them until after the regulation is issued.

2. Negotiating for future employment: you have a financial interest in any entity in which you begin employment “negotiations” -- which means a two-way communication made either

personally or through an intermediary such as a headhunter -- with a view towards reaching an agreement regarding future employment or compensation. The financial conflict of interest law requires you to recuse yourself from participating in a government matter affecting the entity's financial interests until either party affirmatively rejects the possibility of future employment or you leave the Agency. *See 18 U.S.C. § Section 208(a).*

Notification requirement: once you engage in an employment negotiation, you must complete, sign, date, and file a Negotiation Notification Form within *three business days* and send it to ethics@epa.gov.

3. Procurement integrity requirements: if you are participating in an ongoing procurement in excess of \$150,000, procurement integrity regulations require that you notify your supervisor and the Ethics Office in writing if you make or receive a contact for future employment with a competing contractor. If you do not affirmatively reject the possibility of future employment, you must disqualify yourself from further participation in the procurement until either party affirmatively rejects the possibility of future employment and the Contracting Officer approves your continued participation. *See 41 U.S.C. § 2103.*

4. Gifts relating to bona fide employment negotiations: you may accept gifts that are customarily provided by a prospective employer in connection with bona fide employment discussions (e.g., travel, lodging, and meals). You may accept these gifts even if the prospective employer is a federally registered lobbyist and you signed the Trump Ethics Pledge. If the prospective employer has matters that may be affected by your official duties, you must first disqualify yourself from EPA matters affecting the financial interests of the prospective employer. If the value of the benefits you accept meet the reporting thresholds, you have to report these gifts on your termination financial disclosure report. *See 5 C.F.R. § 2635.204(e)(3).*

5. Post-employment training: make an appointment to talk to OGC/Ethics or your regional ethics counsel for live counseling. In addition, we highly recommend that you take the online post-employment course [Leaving Federal Service](#).

6. Financial disclosure reporting requirements:

You must submit a **termination Public Financial Disclosure Report (OGE 278e) in INTEGRITY (www.Integrity.gov) within 15 days of departure or no more than 30 days after departure.** Once you know your departure date, contact the Ethics Office at ethics@epa.gov so that we can assign you a termination report in INTEGRITY. You may begin the report at that time after assignment, *but do not submit the report earlier than 15 days of your departure date.* We urge you to file the report before you depart so that you can access the electronic system using your EPA PIV card. If you do not complete the report prior to your departure date, you must notify OGC/Ethics of your forwarding email address so that we can make the necessary changes for

your access from your personal computer. It is your responsibility to provide us with your forwarding information and submit a timely report.

Late filing fee: if you file the OGE 278e more than 30 days after the due date without requesting and receiving an extension from the Ethics Office *before the due date*, **you will be assessed a \$200 late filing fee once you file the report.** We can grant up to a 90-day extension for good cause shown. **Failure to file a termination OGE-278e will result in a referral to the U.S. Attorney General for civil action which may result in civil penalties up to \$50,000. Failure to pay late fees will result in referral for debt collection.**

ETHICS RULES THAT APPLY *AFTER* YOU LEAVE GOVERNMENT SERVICE

1. **Criminal post-employment restrictions - 18 U.S.C. § 207**

a) Permanent Bar, 18 U.S.C. § 207(a)(1):

You may not, on behalf of a third party, appear before or communicate with an officer or employee of the United States with the intent to influence that person on a particular matter involving specific parties in which you participated personally and substantially while a government employee. This restriction does not prohibit providing "behind the scenes" assistance. (If you are an attorney, your state bar rules may prohibit this type of assistance, but we do not provide opinions on your bar obligations).

A "*particular matter involving specific parties*" include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term *does not include* a rulemaking or other particular matter of general applicability. "Personal" participation means that you participated directly in the matter and includes the direction or control over a subordinate employee's participation. Your participation is "substantial" if, at the time of your involvement, it was of significance to the matter. This includes decision-making, reviewing, or recommending an action to be taken. It does not include ministerial acts relating to the matter.

b) One-Year Bar (Trade or Treaty Negotiations), 18 U.S.C. § 207(b):

For one year after leaving federal service, you may not knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which you participated personally and substantially as an employee during your last year of federal service.

c) Two-year restriction for former supervisors, 18 U.S.C. § 207(a)(2):

For two years after your departure, you may not appear before or represent others with the attempt to influence government action before the federal government on particular matters involving specific parties that were actually pending under your “official responsibility” in your last year of federal service. This restriction applies only to the supervisors (including the Administrator, Regional Administrators, Assistant Administrators, etc.) but not to team leaders. For the purposes of this restriction, personal and substantial participation is not required. Note that this restriction applies even if you did not participate in the matter personally or substantially because of a recusal.

Example: Six months ago, a Regional Administrator recused herself from participating personally in a contract award to a company because she owns stock in that company. Upon leaving federal service, she takes a position with the winning contractor and now wants to make representations back to the federal government on behalf of her new employer on that contract. Even though she did not work personally and substantially on the contract because of her recusal, she may not, for two years after her departure, represent her new employer before the government on this contract because it was pending under her official responsibility during her last year of government service.

The definition of “official responsibility” is the “direct administrative or operating authority, whether intermediate or final, and whether exercisable alone or with another, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.” The scope of your “official responsibility” is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. For the Agency head, all matters in the Agency are deemed to be within his or her “official responsibility.” For a Regional Administrator, all pending particular matters in the Region are deemed to be within your “official responsibility.” For the General Counsel and the Assistant Administrator for Enforcement and Compliance Assurance, their areas of “official responsibility” include their respective offices as well as the ten regional counsels because of the regional alignment with Headquarters.

d) Additional Post-Employment Restrictions For Former “Senior Employees:”

A “**senior employee**” includes members of the Senior Executive Service (SES) (either career and non-career), and individuals who are paid at a rate of basic pay that is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (this figure changes every January). **As of January 2020, the figure is \$170,665.** In addition, all Presidential Appointees with Senate Confirmation (PAS) appointees, irrespective of their salaries, are considered to be former “senior employees.” See 5 C.F.R. 2641.104 and 5 U.S.C. §§ 5313-5315.¹

¹ The statute lists the following specific EPA positions: Administrator, Deputy Administrator, Assistant Administrator for Toxic Substances, Assistant Administrator for Solid Waste, Assistant Administrators, Chief Financial Officer, Chief Information Officer. For the purposes of this statute, OGC Ethics assumes

1) One-Year Bar on communicating with or appearing before the EPA - 18 U.S.C. § 207(c):

For one year after serving as a “senior employee,” you may not knowingly make any communication to or appearance before an officer or employee of EPA on behalf of another with the intent to influence government action on a matter pending at the Agency. Please note that the restriction will apply to *any matter* pending before the Agency, to include broad policies, regulations, legislation, as well as a “particular matter involving specific parties” or a “matter of general applicability” that is narrowly focused on a discreet industry sector.

NOTE: if you were detailed from EPA to another department, agency, or other entity, during the period of your detail, you are deemed to be an officer or employee of BOTH departments, agencies, or other entity.

Example: You leave EPA as a “senior employee” to work for a regulated entity. The next week, the Agency issues a new regulation affecting your new employer. Because you are a former senior employee, you may not submit comments on behalf of your new employer to the Agency objecting to the regulatory requirements because you are still within the one-year “cooling-off” period under 18 U.S.C. § 207(c). **Remember, this is a criminal statute.**

2) One-Year Bar Relating to aiding, advising, or representing a foreign entity, 18 U.S.C. § 207(f):

For one year after serving as a “senior employee,” you may not knowingly aid, advise, or represent a foreign entity before any employee of a federal department or agency with the intent to influence a decision of such employee in carrying out his or her official duties. This restriction extends to all federal agencies, U.S. courts or court martials, as well as the President, Vice President, and Members of Congress. A “foreign entity” is a foreign government or a foreign political party. *See* 18 U.S.C. § 207. Unlike the other criminal post-employment restrictions, this restriction applies to “behind-the-scenes” activities.

e) Exceptions to the criminal post-employment law:

1) Common exceptions to the permanent and two-year bars, 18 U.S.C. §§ 207(a)(1) and (2):

- Acting on behalf of the US government - if you are re-employed by the United States or called as a witness by Congress, the post-employment restrictions do not apply. However, working for a government contractor is not covered by this exception.
- Acting as an elected official - if you are carrying out your official duties as an *elected official* of a state or local government, the post-employment restrictions do not apply.
- Employee of a Tribe – if you are an employee or an elected or appointed official of a tribal organization or inter-tribal consortium, you may represent the tribe back to the United States provided that you submit adequate notice to the EPA Administrator and OGC/Ethics.
- Providing testimony - you may give testimony under oath or make statements required to be made under penalty of perjury. Unless expert opinion testimony is given pursuant to court order, or you are called as a witness by the United States, you may not provide such testimony on a matter on behalf of any other person except the United States or Congress if the activity is one covered by the permanent restrictions at 18 U.S.C. § 207(a)(1).

2) Additional exceptions for the one-year restriction for former “Senior Employees” before the EPA, 18 U.S.C. § 207(c):

- Acting as an employee of a state, local government or an instrumentality thereof, a hospital, or certain educational institutions
- Acting on behalf of an international organization in which the United States participates, if approved by the Secretary of State
- Imparting special knowledge not for compensation
- Making appearances made solely on behalf of a candidate, an authorized committee, a State committee, or a political party.

c) Compensation bar for matters affecting the government, 18 U.S.C. § 203:

After you depart, a new employer may not compensate you for any covered representational services that were provided at a time when you were a federal employee. “*Representational services*” means communications to or appearances before federal entities (not just EPA) with the intent to influence the government on behalf of a third party. Common examples are legal and consulting services where you may share in profits or fees related to those representations once you leave federal service.

Example: You are a former EPA attorney who is now an equity sharing partner at Dewey, Cheatham and Howe, a prominent law firm with an extensive federal practice. As a former federal employee, you may not share in any fees attributable to the firm's representational services before the government while you were still employed by the EPA. Therefore, your compensation plan, to include any bonus or partnership share, may not include any of the firm's profits that comes from its covered representational services before the federal government during your federal tenure.

7. Additional Post-Employment Restrictions For Procurement Officials

a) Procurement integrity provisions relating to contracts in excess of \$10 million:

- Officials with a major role in a federal procurement in excess of \$10 million may not accept compensation from the winning contractor as an employee, officer, director, or consultant within one year after serving as: the procurement contracting officer; the source selection authority; a member of the source selection board; or the chief of the financial or technical evaluation panel of a contract involving payment or claims of over \$10 million.
- This restriction also applies to former officials who have personally made the federal agency decision to: award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order to that contractor; establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of \$10 million; approve issuance of one or more contract payments in excess of \$10 million; or pay or settle a claim in excess of \$10 million with that contractor. *See* 41 U.S.C. § 2104 and 48 C.F.R. § 3.104.

b) Non-disclosure of procurement-sensitive information: as a former employee, you may not knowingly disclose contractor bid or proposal information or source selection information before the award of a federal agency procurement contract. *See* 41 U.S.C. § 2102.

8. Additional Post-Employment Guidance for Officials Involved in Grants:

If you were involved in any grant competition activities while at EPA, then you should review the post employment implications under EPA's Grants Competition Conflicts of Interest and Competitive Advantage policies. While not strictly statutory or regulatory prohibitions, these policies ensure that EPA can preserve the integrity of its competitions. Applicants competing for EPA awards cannot have an unfair competitive advantage or even the appearance of an unfair advantage. If you were involved in certain grant activities, including but not limited to the development, review and preparation of solicitations, then you, your family members, or your new employer may be constrained in competing for grants under the solicitations in which you participated. For more information about grants conflicts of interest and competitive advantage policies, contact Bruce S. Binder, Senior Associate Director for Grants Competition, at binder.bruce@epa.gov.

9. A Special Note for Attorneys:

Attorneys are reminded to consult their state bar rules or seek advice from state bar counsel even if you did not work as an attorney for EPA. These rules may differ from the federal criminal post-employment rules. For example, although the federal post-employment laws permit “behind the scenes” work for a new employer on matters you worked on or on which you supervised others, the American Bar Association (ABA) restricts such communications. ABA Model Rule 1.11(a) permits a former government employee to represent a client in connection with a matter in which the lawyer participated personally and substantially as a “public officer or employee” only if he first obtains consent from the appropriate government agency. The DC Bar is even more restrictive than the ABA. DC Bar rule 1.11(a) prohibits the former employee from accepting employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee. Under this rule, there is no waiver possibility, and the former government lawyer is not permitted even to provide “behind the scenes” work. OGC/Ethics does not provide guidance on state bar rules.

10. Additional restrictions imposed by the Trump Ethics Pledge, Executive Order 13770:

The Trump Ethics Pledge you signed subjects you to additional restrictions under the Lobbying Disclosure Act (LDA) and the Foreign Agents Registration Act of 1938, as amended (FARA):

- Under Paragraph 1, you may not engage in “lobbying activities” with respect to EPA for **five years**;
- Under Paragraph 3, you may not engage in lobbying activities with respect to any covered executive branch official² or non-career SES appointee for the remainder of the Trump Administration; and
- Under Paragraph 4, after leaving federal service, you may never engage in any activity on behalf of any foreign government or foreign political party that, if it had been undertaken on January 20, 2017, would have required you to register under the FARA.

NOTE: The EPA Ethics Office does not provide guidance on the interpretation of either statute. We can, however, provide you with a summary of the restrictions.

As used in the Pledge paragraphs 1 and 3, the term “*lobbying activities*” has “the same meaning as in the LDA, except that *the term does not include* communicating or appearing with regard to:

² For the purposes of E.O. 13770, “covered executive branch official” means: the President; the Vice President; any official in the Executive Office of the President; any Executive Schedule official (EL I-V); any uniformed officer at pay grade 0- 7 or above; and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character....”, including Schedule C employees. 2 U.S.C. § 1602(3). See E.O. 13770, sec. 2(c).

- a judicial proceeding
- a criminal or civil law enforcement inquiry, investigation, or proceeding;
- any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedures Act, as amended, 5 U.S.C. § 551 *et seq.*

The term relies partly on the definition of “lobbying activities” found in the LDA, which includes both “*lobbying contacts*” and behind-the-scenes efforts in support of such contacts.³ “*Lobbying contacts*” are limited to written or oral communications with covered officials that are made on behalf of a client.⁴ The term “*client*” means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity.⁵

For purposes of the Pledge paragraphs 1 and 3, “*lobbying activities*” includes the following:

- any oral or written communication to a covered executive branch official or non-career SES appointee; or
- efforts that are intended, at the time of performance, to support a covered lobbying contact to such person.

The LDA’s definition of “*lobbying contacts*” is limited to certain types of communications but excludes 19 types of communications.⁶ For example, the definition excludes “a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official.”⁷

For the purposes of Pledge paragraph 4, you cannot ever act as an “agent” of a “foreign principal,” which includes any foreign governments and foreign political parties. Under the FARA, you are required to register before acting as an agent of a foreign principal in undertaking any of the following actions within the United States, either directly or through another person: (a) engaging in “political activities” on behalf of a foreign principal; (b) acting as a foreign principal’s public relations counsel, publicity agent, information service employee, or political consultant; (c) soliciting, collecting, disbursing, or dispensing contributions, loans, money, or other things of value for or in the interest of a foreign principal; or (d) representing the interests of the foreign principal before any agency or official of the U.S. Government. Your Pledge restrictions do not prohibit any activities that the FARA exempts from its registration

³ The term “lobbying activities” means “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time, for use in contacts, and coordination with the lobbying activities of others.” 2 U.S.C. § 1602(7).

⁴ 2 U.S.C. § 1602(8)(A).

⁵ 2 U.S.C. § 1602(2).

⁶ See 2 U.S.C. § 1602(8)(B)(i)-(xix) for the 19 exemptions.

⁷ 2 U.S.C. § 1602(8)(B)(v).

requirement, but if you have questions about the FARA, you will need to [contact the Department of Justice](#) directly. The EPA Ethics Office does not provide advice on the FARA.

ADDITIONAL PLEDGE RESTRICTIONS

| ETHICS PLEDGE | Paragraph 1 | Paragraph 3 | Paragraph 4 |
|--|--|---|--|
| Basic Prohibition | I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency. | In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career SES appointee for the remainder of the Trump Administration. | I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended. |
| Length of Restriction | 5 years | Remainder of the Trump Administration (January 20, 2021) | permanent |
| Commencement of Restriction | Termination of employment as an appointee | Termination of government service | Termination of government service |
| From Whom Appointees are Restricted | Covered executive branch officials at the former appointee's former agency ("with respect to that agency") | Covered executive branch officials throughout the executive branch; Non-career senior executive service appointees throughout the entire executive branch | Everyone in the United States. Unless a FARA exemption applies, can't ever engage in any in any of the activities listed above on behalf of any foreign government or foreign political party, if the activity occurs within the United States. |

* * * * *

This document provides you with a summary of the major ethics rules that apply to you when you are seeking or negotiating for employment and for post-employment. *It is not a substitute for tailored ethics advice and is not an ethics opinion.* We strongly recommend that you schedule a meeting with the Ethics Office to receive an opinion on your specific facts and circumstances. Although the advice we provide you is not subject to privilege, we remind you that, when you seek advice from an ethics official, provide the relevant facts, and follow our guidance in good faith, then the ethics opinion may be a mitigating factor in any prosecution should you violate the criminal provisions. Please contact us at ethics@epa.gov. Even after you leave EPA, we are here to answer your post-employment questions.

REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation

NOTIFICATION OF NEGOTIATION OR AGREEMENT

Your full name

Your telephone number*

Date negotiation or agreement began

Your Title / Office / AAship or Region

Your email address*

Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation

** Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

- | | Yes | No | |
|----|--------------------------|--------------------------|---|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements?
See page 2.

For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.

Sign and submit to ethics@epa.gov:

Your signature

OGC/Ethics Use Only:

Statement 1: EPA’s programs, policies, or operations affect the non-federal entity with which I am seeking employment.

If your answer is “yes” to any of the following questions, then you must answer “yes” to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check “yes” to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check “yes” to statement 3.

- Will the work you do affect the sector? Don’t concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues’ projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

Need help answering these statements? Contact ethics@epa.gov to discuss.

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Subject: reminder that I need confirmation, waiver request from you
Date: Monday, July 27, 2020 3:49:00 PM
Attachments: [When to Report Transactions on the OGE 278 and Part 7 - May 2019.docx](#)
[Advisory to all 278 filers about filing fee.pdf](#)
[Darwin uncertified annual 278.pdf](#)

Hi Henry,

I've now deleted all of the 2020 transactions from your annual report. Here's what is left for you to do, please:

- In Part 6, (b) (6)
(b) (6)
 - Please confirm that you did not (b) (6)
(b) (6)
- You had previously reported have a (b) (6) but that is not included this year
 - Please confirm that you do not have any (b) (6)
(b) (6)
- To request a waiver of the late filing fee penalty, please explain in an email to me by July 29 what prevented you from filing timely periodic transaction reports.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Fugh, Justina
Sent: Thursday, July 23, 2020 11:39 PM
To: Darwin, Henry <darwin.henry@epa.gov>
Subject: Here's what happens when you're on the wrong end of an ELMS measure

Hi Henry,

EPA Ethics has two ELMS measures for meeting our statutory and regulatory dates for reviewing, certifying and releasing public financial disclosure reports. By law, we must release any report we receive within 30 days (whether or not certified), and we have to review each report within 60 days of our receipt. And, by law, filers who file their reports late, including any periodic transaction reports, must pay the late filing fee. So, in keeping with our ELMS measures, we have reviewed your report within the applicable time period. To your sorrow, we have found that you owe late fees.

Let's begin with three technical issues with your report and what I need from you in order to certify it:

- You over-reported some transactions. The "reporting period" for this report is CY 2019 so there is no need for you to include any transactions in 2020. As you can see from the pdf of your uncertified form (see attached), in Part 7, you provided information about (b) (6) that occurred in CY 2020.

- Nothing for you to do. I will remove those transactions from your report but have saved that version to a pdf so that you can easily recreate them for your next filing
- In Part 6, (b) (6)
- Please confirm that you did not (b) (6)
- You had previously reported have a (b) (6) but that is not included this year
- Please confirm that you do not have any (b) (6)

Now for the notification of the late fees. Transactions of securities are required to be reported the earlier of 30 days after learning of the transaction or 45 days of the transaction taking place. This requirement and the attached chart on “when to report transactions” was communicated to you during your initial ethics training. Additionally, in August 2019, you and all other public filers received the attached reminder advisory from the Ethics Office. But in reviewing your report filed on 6/29/20, we see in part 7 that you reported (b) (6) for the first time, and you did not file any periodic transaction reports in INTEGRITY. You failed to report (b) (6)

. A \$200 late fee per missed report is assessed as a matter of law. You owe the government \$600.

You may request a waiver of the late filing fee penalty if there were extraordinary circumstances that prevented you from filing a timely periodic transaction report. If you wish to request a waiver, then please send me an email by July 29. Otherwise, we will direct you to submit a payment by check once we return to the office.

Thank you for your attention to these matters,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| | Periodic Transaction Report | Annual and/or Termination Report |
|---|-----------------------------|-----------------------------------|
| Investment Assets | Report on the OGE 278-T? | Report on Part 7 of the OGE 278e? |
| Transactions of \$1,000 or less | | |
| • Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes ¹ |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds" ² | No | Yes |
| • Any asset in which the transaction amount is \$1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust ³ | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

¹ Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

² To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

³ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely Filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: David Cozad *David Cozad* 8/29/19
Acting Designated Agency Ethics Official

TO: All EPA Public Financial Disclosure Report Filers

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app., to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position (either permanently or for more than 60 days on detail), you are required by this statute to file the public financial disclosure report. As executive branch employees, we are all bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations.

This memorandum formally reminds you that you are required by law to timely and accurately file your Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² Failure to file timely will result in a **\$200 late filing fee** unless you formally request and receive a waiver of the late fee from the Designated Agency Ethics Official (DAEO) or Alternate Designated Agency Ethics Official (ADAEO).³ Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures.

In addition to filing timely, you must also file a complete and accurate report. Should OGC/Ethics contact you for any additional required information, you will have no more than **30 days** to update your report. For guidance on how to file an accurate report, please refer to the Public Financial Disclosure Guide or contact OGC/Ethics at ethics@epa.gov.

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

Please refer to this chart for your filing obligations:

| | |
|--|---|
| OGE 278e - New Entrant reports | Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | No later than May 15 |
| OGE 278e – Termination reports | No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports ⁵ | The earlier of 30 days after learning of a transaction or 45 days of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov, to the attention of the DAEO and ADAEO, describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

You are required by law to comply with these financial reporting obligations. Your colleagues in OGC/Ethics are available to provide assistance, but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we know that you take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278T*

cc: Justina Fugh, Alternate Designated Agency Ethics Official

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

From: [Fugh, Justina](#)
To: [Wheeler, Andrew](#)
Cc: [Molina, Michael](#); [Jackson, Ryan](#); [Darwin, Henry](#); [Griffo, Shannon](#); [Hope, Brian](#)
Subject: Revised Recusal for Henry Darwin
Date: Wednesday, November 14, 2018 11:25:00 AM
Attachments: [Memo Nov 8, 2018.pdf](#)

Hi there,

Attached please find a revised recusal statement for Mr. Henry Darwin. This statement is updated to reflect his new title and acknowledge the fact that his spouse now works in the same organizational unit as he does. He will continue not to participate in any personnel issue involving his spouse.

Regards,

Justina

Justina Fugh | Director, Ethics Law Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

NOV - 8 2018

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Updated Recusal Statement

FROM: Henry Darwin 
Associate Deputy Administrator and Chief of Operations

TO: Andrew R. Wheeler
Acting Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This updated memorandum reiterates my existing and ongoing ethics obligations as described in my September 15, 2017 recusal statement, reflects my current EPA title, and removes my State of Arizona recusal since the one-year cooling off period with my former employer has expired.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

RECUSAL REGARDING MY SPOUSE

I have consulted with OGC/Ethics and been advised that I am precluded from participating personally and substantially in any determination, request or recommendation that specifically relates to or affects the salary or benefits of my spouse, Veronica Darwin. Therefore, pursuant to 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, I will continue to recuse myself

from participating in any award, promotion or any other personnel or administrative matter that involves my spouse as a specific party.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I have ethics obligations with respect to my former employer, the State of Arizona. The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me. The definition of “former employer” in the Executive Order excludes state government.¹ Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Ryan Jackson, Chief of Staff
Justina Fugh, Senior Counsel for Ethics

¹ See Exec. Order 13,770, Section 2(j), which provides that “‘former employer’ does not include ... State government.”

From: [Fugh, Justina](#)
To: [Darwin, Henry](#)
Cc: [Griffo, Shannon](#)
Subject: revised recusal
Date: Monday, November 5, 2018 2:04:00 PM
Attachments: [Henry Darwin updated recusal 11_5_18.docx](#)

Hi Henry,

Following up on our conversation during Friday's fire drill, attached please find the revised recusal statement that updates your title, the end of the Arizona cooling off period, and the re-emphasis on Veronica's job change. Once you sign, please ask someone to date stamp it for you and then send a pdf to me.

Thanks,

Justina

Justina Fugh | Director, Ethics Law Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
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Cc: [Keith, Jennie](#)
Subject: Your Invitation to ELI's 2020 Award Ceremony
Date: Thursday, September 24, 2020 11:47:03 AM

Hi there,

OGC/Ethics understands that you have received an invitation from the Environmental Law Institute (ELI) to be its virtual guest at its annual awards dinner and reception to be held on Thursday, October 15, 2020. Although there is no cost associated with the dinner itself, ELI is charging \$100 for non-federal participants at their reception. You have been offered free attendance at the reception. But if, on your own, you elect to pay for the reception anyway, then you must do so personally. EPA will not pay for your attendance.

I am writing to confirm that, if you decide to attend this event virtually, you may do so consistent with the Standards of Ethical Conduct for Employees of the Executive Branch and, if you are a political appointee, with the Trump Ethics Pledge.

This event qualifies for the Widely-Attended-Gathering gift exception and the donor is not a federally registered lobbyist. Thus, OGC/Ethics determines that your attendance at the event is in the Agency's interest because it will further agency programs and operations. Should you attend the dinner and/or reception, then you will NOT be required to report this as a gift on your financial disclosure report form because the fair market value is BELOW the reporting threshold.

This approval applies only to invitations from ELI itself. Any invitations from other sources will require separate determinations by either OGC or the appropriate Deputy Ethics Official. This determination covers you only -- the invitation is not transferable and is not intended for more than just one attendee.

Acceptance of Free Attendance to a Dinner and Fundraiser (WAG rule)

The gift offered is an evening reception and dinner sponsored by ELI. Because the organization is offering you a complimentary ticket, we must analyze it according to the gift rules. Generally, federal employees are prohibited from accepting gifts given because of their official position or given by a prohibited source (typically, a person either regulated by or seeking to do business with the EPA). In this instance, the gift of free attendance is offered to you because of your official position. In analyzing the situation, we determined that the WAG exception is available because the reception will be widely attended, there will be a diversity of views represented, and there is an opportunity for the exchange of ideas. In order to utilize this gift exception, OGC/Ethics must also make a written determination that we believe your attendance is in the Agency's interest. We do, in fact, conclude that there is an Agency interest in your attendance if you wish to attend virtually.

Please let me know if you have any questions.

Regards,

Justina

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